

C H A P.
III.

and weighed in Discharge of such Debt, be the same of what Nature soever. And the Person in whose Houses the Tobacco lies, or shall lie, shall take Care of and preserve the same for one whole Year, as they are obliged to do Tobacco actually received by any Creditor, Merchant or others; any Law, Statute, or Usage to the contrary notwithstanding.

The Plaintiff, if he sues afterwards, shall lose his Costs, and have Judgment for the Ballance.

IV. And be it further Enacted, by the Authority, Advice and Consent aforesaid, That if any Debtor who hath tendered Tobacco to his Creditor, which is in very good Condition, clear of all manner of Trash, according to the tenor of the Specialty aforesaid, and well packed in good seasoned Hogheads, and which Hogheads of Tobacco contain Five Hundred Pounds of neat Tobacco, at the least, and which the Creditor refused, and hath such Tobacco ready to tender and pay to his Creditor, be yet notwithstanding sued and prosecuted at Law, in order to recover such Tobacco as he shall be indebted to his Creditor; if at the Trial the Defendant shall make appear by two sufficient Evidences, that he tendered to the Plaintiff such his Debt, in such Tobacco, qualified as aforesaid, having the Tobacco ready and full packed in Hogheads, before the Plaintiff purchased his Writ; then and in every such Case, the Plaintiff shall not recover any Cost of Suit against the Defendant, but shall pay the Defendant what Cost the Defendant hath in that Cause expended, to be deducted out of the Plaintiff's Debt by the Court before whom such Suit shall be: And the Plaintiff shall have Judgment for what shall be remaining due to him after such Deduction made as aforesaid.

If the Plaintiff after such Recovery shall refuse to receive the Tobaccos, and the Defendant be taken in Execution, the same may be brought to a View by a Friend,

V. And in case any Plaintiff, after such Recovery had of any Quantity of Tobacco against any Defendant, having Tobacco packed in Hogheads, and qualified as aforesaid, shall refuse, upon the Defendant's tendering of such Tobacco, to receive the same, but shall sue out Execution against the Defendant, whereby the Defendant is taken in Execution, and imprisoned; then and in such Case, any Friend of the said Defendant so imprisoned, may, on Behalf of such Prisoner, go to the High-Sheriff, and require him to certify to the next Justice of the Peace, at whose Suit, and for what Sum, the said Prisoner is in Execution; which Certificate the Sheriff shall make gratis, and give to such Person requiring the same, within Five Hours after such Demand, under Penalty of Two Thousand Pounds of Tobacco in Cask, to be forfeited by the High-Sheriff if he wilfully refuse to make the same; the one Half thereof to her Majesty, her Heirs and Successors, for the Support of Government, the other Half to the Party grieved, to be recovered by Action of Debt, in any Court of Record of this Province: Which Certificate, so obtained, any Friend or Agent of such Prisoner, shall shew to such next Justice of Peace; and if such Friend or Agent will aver, that the Prisoner hath Tobacco ready to pay such Debtor Damages recovered convenient, and that such Friend will open and shew the same, the said Justice of Peace shall either go in Person, or send two discreet Persons, Freeholders as aforesaid, sworn before him, to view the Tobacco and weigh it, and make Report thereof; and if it happen the Tobacco is found, merchantable, and of such Weight to discharge the whole Sum mentioned in the Execution, then shall the said Justice give Notice to the Sheriff in Writing, under the Hand of such Justice, by the Agent of such Prisoner, that except such Sheriff come and shew good Cause to the contrary, that the said Justice will cause the said Tobacco to be marked on the Creditor's Risque; and if Cause be not shewed within Forty-eight Hours after the Date and Service of such Writing, which shall be dated on or at a certain Hour of a certain Day, that then the Justice shall cause the said Tobacco to be marked and numbered, and shall send the Sheriff a Certificate of the Mark, Number, Weight, and Place where such Tobacco lies, on the Creditor's Account: And, in case the Prisoner is not in his Custody on any other Account, he shall suffer him (paying, or giving Security for his Fees) to go at large, and shall not be answerable upon any Action of Escape;

and if they be found, merchantable, &c.

shall have his Discharge, paying the Sheriff's Fees, &c.

and